IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.31 OF 2005

Monarch Erectors Pvt. Ltd., through
its Director (Mr.Jaiprakash Kalyani) : Petitioner

V/s.

The Commissioner,
Malegaon Municipal Corporation & Ors. : Respondents

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Mr.S. P. Dharmadhikari with Mr.V. N. Tayade for the petitioner.

Mr.N. V. Walawalkar for respondent Nos.1 & 2.

Mr.R. D. Rane, Additional Government Pleader, for respondent No.3.

Mr.V. R. Manohar, Senior Advocate, with Mr. M. Acharya for respondent No.4.

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CORAM : DALVEER BHANDARI, C.J. &
S.A. BOBDE, J.

DATE : MARCH 4, 2005.

P.C.:

1. The petitioner, Monarch Erectors Pvt. Ltd., has filed this petition with a prayer that the respondents be directed to produce the entire record regarding tender notice dated 18.11.2004 and subsequent submission of resolution of the Standing Committee dated 1.12.2004.

2. The petitioner has also sought a direction to quash and set aside the proposal dated 1.12.2004 submitted by respondent No.1 to respondent No.3 for sanction and acceptance of offer made by respondent No.4 which is less than the upset value fixed by the respondent-Corporation.

3. The petitioner has also prayed that the operation and implementation of the order dated 1.12.2004 passed by the Commissioner, Malegaon Municipal Corporation, thereby accepting the offer of respondent No.4 and submitted to respondent No.3 for sanction, pending the hearing and final disposal of this petition, be stayed.

4. Respondent no.1 had published a notice in Indian Express daily on 22.10.2004 inviting offers for appointment of agents for octroi collection for a period of one year from 1.1.2005 to 31.12.2005. The petitioner mentioned that Earnest Money of Rs.1,26,10,000/- was fixed and Rs.4,03,52,000/- was the security deposit in the form of Bank Guarantee in four equal parts of any

Nationalised Bank as and by way of security deposit which was to be submitted within four days of the acceptance of the offer. It is also incorporated in the petition that since nobody came forward in response to the tender notice dated 24.10.2004, respondent No.1 again published a notice dated 5.11.2004 on the same terms and conditions which was not responded as per the expectations of respondent No.1 by any octroi agent of Maharashtra State. Thereafter, third octroi tender notice came to be published by respondent No.1 on 18.11.2004. In this tender notice, the eligibility condition or the qualifications laid down in the previous two tender documents i.e., the offerer should have turnover of Rs.5 crores or more for the previous year came to be deleted. According to the petitioner, it was done apparently to favour respondent No.4.

5. The petitioner also submitted that as per the public notice and condition no.9/VIII of the tender documents, it was specifically made clear that the offer less than the upset value of Rs.25,22,00,000/- shall not be considered and the same will be

rejected. The petitioner-company did not choose to participate in the tender submission process and preferred a letter dated 27.11.2004 and communicated to the Corporation intimating that if at all they decide to accept any offer lower than the upset value, the petitioner-company should be informed forthwith so that the petitioner-company can participate in tender submission. The receipt of this letter was not denied by the Municipal Corporation.

6. It is incorporated in the petition that the petitioner came to know through reliable sources that respondent no.1 favoured respondent No.4 and accepted its offer despite the fact that the amount quoted by respondent No.4 (Rs.21,78,00,000/-) is much less than the upset value (Rs.25,22,00,000/-) fixed by the respondent-Corporation.

7. It is also mentioned that the petitioner is ready and willing to offer more than Rs.21,78,00,000/- and its letter dated 27.11.2004 has been ignored by respondent No.1. It may be pertinent to mention that a legal notice was also sent on

14.12.2004 intimating respondent Nos.1 and 2 that the petitioner is ready and willing to bid more than respondent No.4 and respondent No.1 should publish a fresh tender notice deleting the condition that any offer lower than the upset price shall be rejected, but in vain. Undoubtedly, the Corporation has functioned in contravention of its own condition and though they mentioned that offer less than the upset value shall not be considered, they reduced it and gave the contract to respondent No.4. The Corporation does not deny receipt of the letter from the petitioner and its lawyer's office. They have ignored the same and the contract was given to respondent No.4.

8. The period for which the contract was given to respondent No.4 was one year. Mr.Manohar, learned Senior Counsel appearing for respondent No.4, submitted that respondent No.4 has a valid contract with the Corporation and it incurred huge expenditure which has been enumerated in the reply-affidavit filed on behalf of respondent No.1. Respondent No.4 has spent about Rs.3.25 crores. During the course of

hearing of this petition, the learned counsel for the petitioner and respondent No.4 have submitted that in case the contract is again awarded for the remaining period or such period that the Corporation deems it proper, then respondent No.4 would not claim any damages from respondent Nos.1 and 2, Malegaon Municipal Corporation.

9. On consideration of the totality of the facts and circumstances, we deem it appropriate to direct respondent Nos.1 and 2 to re-advertise the contract from 1.7.2005. Proper publicity shall be given by publishing the tender notice in at least two National newspapers and two local newspapers. All eligible bidders must be given fair opportunity to participate in the entire tender process and the contract be awarded according to the settled principles of law.

10. Before parting with this case, we would like to observe that by order dated 7.2.2005, we had directed the petitioner to deposit Rs.1,26,10,000/- in this Court to demonstrate its bona fide.

The petitioner has deposited that amount. The said amount would be refunded to it by the Registrar General within ten days from today. Respondent Nos.1 and 2 would be at liberty to initiate the process of advertisement, as expeditiously as possible. The learned counsel for the petitioner and respondent No.4 submit that they

are agreeable to this arrangement. No further directions are necessary. This Writ Petition is, accordingly, disposed of.

Sd/-

CHIEF JUSTICE

Sd/-

S.A. BOBDE, J.